

23814 /

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

NO.....

TEXAS INDEPENDENT PRODUCERS & ROYALTY  
OWNERS ASSOCIATION, WEST CENTRAL TEXAS  
OIL AND GAS ASSOCIATION, AND PERMIAN  
BASIN PETROLEUM ASSOCIATION,  
*Petitioners*

v.

FEDERAL POWER COMMISSION  
*Respondent*

---

JOINT AND SEVERAL PETITION OF  
TEXAS INDEPENDENT PRODUCERS &  
ROYALTY OWNERS ASSOCIATION  
WEST CENTRAL TEXAS OIL AND GAS  
ASSOCIATION  
AND PERMIAN BASIN PETROLEUM  
ASSOCIATION,  
FOR REVIEW OF OPINION AND ORDERS  
OF THE FEDERAL POWER COMMISSION

---

FILED

OCT - 3 1966

WM. B. LUCK, CLERK

JOHN DAVENPORT  
902 International Life Building  
Austin, Texas  
*Attorney for above Petitioners*



21814

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

NO.....

TEXAS INDEPENDENT PRODUCERS & ROYALTY  
OWNERS ASSOCIATION, WEST CENTRAL TEXAS  
OIL AND GAS ASSOCIATION, AND PERMIAN  
BASIN PETROLEUM ASSOCIATION,  
*Petitioners*

v.

FEDERAL POWER COMMISSION  
*Respondent*

JOINT AND SEVERAL PETITION OF  
TEXAS INDEPENDENT PRODUCERS &  
ROYALTY OWNERS ASSOCIATION  
WEST CENTRAL TEXAS OIL AND GAS  
ASSOCIATION  
AND PERMIAN BASIN PETROLEUM  
ASSOCIATION,  
FOR REVIEW OF OPINION AND ORDERS  
OF THE FEDERAL POWER COMMISSION

FILED

OCT - 3 1966

WM. B. LUCK, CLERK

JOHN DAVENPORT  
902 International Life Building  
Austin, Texas  
*Attorney for above Petitioners*



**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

NO.....

TEXAS INDEPENDENT PRODUCERS & ROYALTY  
OWNERS ASSOCIATION, WEST CENTRAL TEXAS  
OIL AND GAS ASSOCIATION, AND PERMIAN  
BASIN PETROLEUM ASSOCIATION,  
*Petitioners*

v.

FEDERAL POWER COMMISSION  
*Respondent*

---

JOINT AND SEVERAL PETITION OF  
TEXAS INDEPENDENT PRODUCERS &  
ROYALTY OWNERS ASSOCIATION  
WEST CENTRAL TEXAS OIL AND GAS  
ASSOCIATION  
AND PERMIAN BASIN PETROLEUM  
ASSOCIATION,  
FOR REVIEW OF OPINION AND ORDERS  
OF THE FEDERAL POWER COMMISSION

THE  
JOURNAL OF THE  
ROYAL ANTHROPOLOGICAL INSTITUTE  
VOLUME 10, PART 1, 1980

CONTENTS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

***TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:***

COME NOW Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association (Petitioners) and jointly and severally petition this Honorable Court for review of Federal Power Commission (Commission) Opinion No. 495, and accompanying orders thereto, issued June 15, 1966, in F.P.C. Docket Nos. CP65-213, CP65-214, and CP65-215, review of the Commission Order Denying Reconsideration, Waiver of the Commission's Rules and Making Determination of the Question of "Extraordinary Circumstances" issued December 17, 1965 in the same proceedings, and review of the Commission's Order Denying Application for Rehearing issued August 4, 1966, in the same proceedings. This petition is filed pursuant to Section 19 (b) of the Natural Gas Act (52 Stat. 831, as amended by 62 Stat. 991, 63 Stat. 107, 72 Stat. 947; 15 U.S.C. §717(r)), and Rule No. 34 of the Rules of this Court.

**I.**

**STATEMENT OF THE NATURE OF THE PROCEEDING  
OF WHICH REVIEW IS SOUGHT**

1. By the Opinions and Orders of which review is here sought, the Commission issued a certificate authorizing the construction of additional facilities for and the importation of 100 million cubic feet per day of Canadian natural gas commencing on November 1, 1966, and an additional 100 million cubic feet per day commencing on November 1, 1967, for transportation and sale by Pacific Gas Transmission to the Pacific



Gas and Electric Company for resale in Northern California. The Opinions and Orders were issued purportedly under the authorization of Section (c) and (e) of Section 7 of the Natural Gas Act, (52 Stat. 825; 15 U.S.C. Sect. §717 (f)) and the authorized importation constitutes an addition to an original (1960) authorization to Pacific Gas Transmission to deliver an average of 415 million cubic feet of gas per day to the Pacific Gas and Electric Company.

2. Petitioners are trade associations with a combined membership of approximately 7500 independent producers and royalty owners of crude oil and natural gas. Since many hundreds of members of these associations engage in sales of natural gas subject to the jurisdiction of the Commission, under the Natural Gas Act, and since most of the jurisdictional natural gas in West Texas is sold into the California markets, Petitioners sought to intervene in the proceeding below; and having demonstrated to the Commission below their interest in these proceedings, were granted leave to intervene by the Commission Order dated May 25, 1965.

3. For purposes of this petition the most pertinent procedural events may be summarized as follows:

a. A pre-hearing conference was held on July 22, 1965, pursuant to the amended order of the Commission issued on June 18, 1965, (30 F.R. 8286). The hearing itself began on September 15, 1965, and concluded on September 29, 1965.

b. On the opening day of the hearing the hearing examiner sustained a Motion to Exclude Testimony by reference of Keith C. McKinney and Barry Hunsaker. Petitioners and others sought the issuance of subpoenas duces tecum for McKinney and Hun-



saker, but the presiding examiner refused to issue these subpoenas. Petitioners and others then sought to prosecute an appeal to the Commission seeking issuance of subpoenas for these witnesses, but this appeal was denied by the Commission in its Order issued December 17, 1965. At the suggestion of the presiding examiner the originally proffered testimony of these witnesses was submitted as an offer of proof, but Petitioners emphasized that this offer of proof was not a substitute for the live testimony of these witnesses, who were not available to Petitioners and other parties except by subpoena.

c. The hearing examiner issued his initial decision on February 17, 1966, approving issuance of a certificate authorizing transportation and sale of additional quantities of gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company and authorizing importation of this gas from Canada.

d. Exceptions to the initial decision were filed by these Petitioners and others on March 17, 1966.

e. The Commission issued its Opinion No. 495 dated June 15, 1966, authorizing the importation of the additional quantities of gas as shown in the Pacific Gas Transmission application.

## II.

### FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED

The Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association are each non-profit corporations created under the laws of

the State of Texas. Members of Petitioners are engaged in the sale of natural gas in interstate commerce of natural gas for resale in Northern California. The Commission is an agency of the United States Government created and existing under the laws of the United States. Its membership is composed of Lee C. White, Chairman; L. J. O'Connor, Jr.; Charles R. Ross; Carl E. Bagge, and John Carver, Jr. These Commissioners are duly appointed, qualified, and acting members of the Commission. The Commission and its members are charged with the responsibility of administering the Natural Gas Act, the provisions of which apply to the sale in interstate commerce of natural gas for resale. The principal office of the Commission is at 441 G Street, N.W., Washington, D. C. 20426.

Petitioners are intervenors in the proceedings below in Docket Nos. CP65-213, CP65-214, and CP65-215, and are aggrieved by Commission Opinion No. 495 and the Orders issued on December 17, 1965, June 15, 1966, and August 4, 1966, in that such Opinion and Orders are unlawful under, and violative of the Natural Gas Act, the Administrative Procedure Act of 1964, and the Constitution of the United States.

This petition for review is filed under Section 19(b) of the Act. Pursuant to Section 19(a) of the Act, Petitioners filed their application for rehearing on July 8, 1966. By Order issued August 4, 1966, the Commission denied Petitioners' application for rehearing.

This petition for review is filed within sixty days of the date Petitioners' application was denied, in accordance with the provisions of Section 19(b) of the Act.

The first petition for review from Opinion No. 495 was filed in this Court by the California Gas Producers

Association, et al., and pursuant to the provision of 28 U.S.C. § 2112, all subsequently filed petitions will be consolidated before this Court for review. Pacific Gas Transmission Company, applicant below, has its principal place of business in San Francisco, California. Venue, therefore, is in this Court.

### III.

#### GROUND'S UPON WHICH RELIEF IS SOUGHT

These Petitioners throughout these proceedings sought to present evidence relating to a cheaper, more dependable, supply of natural gas than that proposed to be imported under the Pacific Gas Transmission application. The hearing examiner struck the evidence of Arlan Edgar, witness for the Permian Basin Petroleum Association and Bob R. Harris, witness for the State of Texas, both of whom would have shown the availability of ample gas supplies from the West Texas area. The testimony of witnesses McKinney and Hunsaker was excluded by the hearing examiner and specifically affirmed by the Commission in its Order of December 17, 1965. This excluded testimony would have established that large new additional supplies of gas were (and are) available from West Texas-New Mexico wells and can be delivered more cheaply than the Pacific Gas Transmission gas to the Northern California area.

This denial of the admission of this evidence, clearly relevant to this hearing and vital to support Petitioners' position, was a denial of due process guaranteed by the Constitution of the United States, and an abdication by the Commission of its statutory responsibilities.

As set forth hereinabove and in the Petitioners' application for rehearing, these Petitioners contend that the Commission committed the following errors in Opinion No. 495 and the Orders in this proceeding:

1. The Commission failed to meet its statutory responsibility to determine the best, cheapest, and most dependable source of natural gas and thereby to protect the interest of the public.

2. The Commission's denial of the issuance of subpoenas and the admission of testimony by reference is unlawful under the Natural Gas Act, the Administrative Procedures Act, and the Constitution of the United States.

3. The Commission erroneously found that a market exists for the proposed additional sales by Pacific Gas Transmission to Pacific Gas and Electric, contrary to the evidence of record.

4. The Commission erred in granting the application for certification, based primarily on the utilization of the present Pacific Gas Transmission pipeline facilities to their fullest capacity.

Petitioners by summarizing the errors of the Commission do not limit the assignment of error to the ones listed; on the contrary, as heretofore stated, every allegation and contention made in the application for rehearing is renewed and repeated as fully as if set forth above.

#### IV.

#### PRAYER FOR RELIEF

WHEREFORE, for all of the foregoing reasons Petitioners pray:

- (a) That the Clerk of the Court serve a copy of this petition upon the Respondent, Federal Power Commission at its official address, 441 G Street, N.W., Washington, D. C. 20426, in accordance with the provisions of Section 19(b) of the Natural Gas Act;



- (b) That this Court direct the Commission to file with the Clerk of this Court the official transcript of the record in the proceedings here sought to be reviewed;
- (c) That the Court review the Commission's Opinion No. 495 issued June 15, 1966, and its Orders of December 17, 1965, June 15, 1966, and August 4, 1966, respectively, and upon such review, reverse and set aside this opinion and orders with regard to the errors specified in this Petition and
- (d) That the Court exercise jurisdiction over the parties and subject matter of this Petition and afford Petitioners such other and further relief as the law and circumstances require.

Respectfully submitted,

TEXAS INDEPENDENT PRODUCERS &  
ROYALTY OWNERS ASSOCIATION

WEST CENTRAL TEXAS OIL  
AND GAS ASSOCIATION

PERMIAN BASIN PETROLEUM  
ASSOCIATION

By .....

  
JOHN DAVENPORT

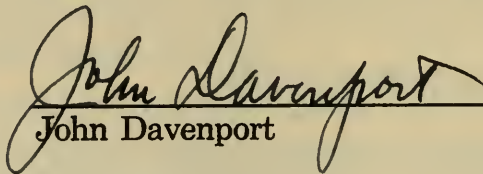
Attorney for above Petitioners

902 International Life Building  
Austin, Texas


September 29, 1966

THE STATE OF TEXAS  
COUNTY OF TRAVIS

JOHN DAVENPORT, being first duly sworn according to law deposes and says that he is an Attorney for Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association; that as such he has signed the foregoing document; that he is authorized so to do; that he has read said document and is familiar with the contents thereof; and, that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
John Davenport

SUBSCRIBED AND SWORN TO BEFORE ME,  
a Notary Public, this 29th day of September, 1966.

  
\_\_\_\_\_

Bernice B. Ford  
Notary Public in and for Travis  
County, Texas

My commission expires June 1, 1967.

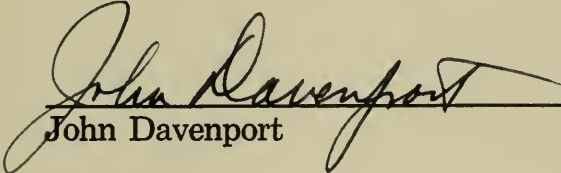
## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing "Joint and Several Petition for Review of Opinion and Orders of the Federal Power Commission" upon the following party:

Joseph H. Gutride, Secretary  
Federal Power Commission  
441 G Street, N.W.  
Washington, D. C. 20426

and all parties to the proceedings.

Dated at Austin, this 29th day of September, 1966.

  
\_\_\_\_\_  
John Davenport



